

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**LEOPOLDO JIMENEZ, *Applicant***

**vs.**

**TERRY MECHANICAL, INC.;**  
**PROCENTURY INSURANCE COMPANY, ADJUSTED BY ILLINOIS MIDWEST**  
**INSURANCE AGENCY, LLC., *Defendants***

**Adjudication Number: ADJ18309914**  
**San Jose District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

Preliminarily, we note that former Labor Code<sup>1</sup> section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
  - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
  - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on February 18, 2026 and 60 days from the date of transmission is Sunday, April 19, 2026. The next business day that is 60 days from the date of transmission is Monday, April 20, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, April 20, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on February 18, 2026, and the case was transmitted to the Appeals Board on February 18, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 18, 2026.

We have given the WCJ’s credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determination. (*Id.*)

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<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**APRIL 20, 2026**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**LEOPOLDO JIMENEZ  
AUBAIN & GUEVARA ALC  
DANDRE LAW  
EMPLOYMENT DEVELOPMENT DEPARTMENT**

**PAG/kl**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.  
KL

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**  
**AND**  
**NOTICE OF TRANSMISSION TO THE APPEALS BOARD**

**I.**  
**INTRODUCTION**

1. Applicant's Occupation : Plumber  
Date of Injury : 4/06/2023  
Parts of Body Injured : left calf and lumbar spine
2. Identity of Petitioner : **Defendant** filed the Petition.  
Timeliness: The petition was timely filed on 9/09/2025.  
Verification: The Petition was verified.
3. Date of Issuance of Order : 1/12/2026
4. **Petitioner's contentions:** Petitioner contends that the evidence does not justify the findings of fact. Specifically, petitioner contends that 1) applicant's credibility was given extraordinary weight so as to counter all other evidence; 2) the finding of injury AOE/COE to the lumbar spine is not consistent with the evidence presented; 3) the finding of maximum medical improvement on March 4, 2024 is not consistent with the evidence presented; and disagree with the finding that the medical reporting is not final.

Applicant has filed an Answer.

**II.**  
**PROCEDURAL HISTORY**

Trial was held on 6/23/2025 and the matter was submitted for decision. Findings and Award and Opinion on Decision issued on 8/15/2025, wherein the undersigned found applicant sustained injury arising out of and in the course of employment to the left calf and lumbar spine, with need for further medical treatment. The undersigned also found applicant P&S/MMI effective 3/04/2024 and entitled to temporary disability indemnity from 9/01/2023 through 3/04/2024, with permanent disability and apportionment deferred pending final report from QME Dr. Jimenez. On 9/09/2025, defendant filed a verified Petition for Reconsideration. On 9/17/2025, an Order Rescinding Decision, Vacating Submission and Order Setting the Matter for Status Conference issued. Submission was vacated to clarify two issues raised on defendant's Petition for

Reconsideration. Following Status Conferences on 10/09/2025 and 10/16/2025, the parties confirmed that:

- 1) In his 10/06/2023 report, Dr. Pedreiro returned the applicant to modified duty, not to full duty as had been asserted in defendant's Petition.
- 2) Applicant's last day of work was 8/31/2023, and was not working during period 9/01/2023 through 9/06/2023, as had been asserted in defendant's Petition.

On 11/03/2025, a Notice of Intention to Re-submit the Matter for Decision issued, noting the above two clarifications. On 11/21/2021, an Order of Submission issued, re-submitting the matter for decision on 11/20/2021. On 12/15/2025, defendant filed a Second Petition for Reconsideration, although no decision had issued as of that date. On 12/19/2025, defendant withdrew its second Petition.

On 1/12/2026, Findings and Award and Opinion on Decision issued. The undersigned noted that the above-referenced clarifications did not result in a need for correction of the undersigned's original findings and opinion. The undersigned again found applicant sustained injury arising out of and in the course of employment to the left calf and lumbar spine, with need for further medical treatment. The undersigned also found applicant P&S/MMI effective 3/04/2024 and entitled to temporary disability indemnity from 9/01/2023 through 3/04/2024, with permanent disability and apportionment deferred pending final report from QME Dr. Jimenez. On 2/05/2026, defendant again filed its verified Second Petition for Reconsideration.

### **III. FACTS**

Applicant LEOPOLDO JIMENEZ , while employed as a plumber on 4/06/2023, by Terry Mechanical Inc., sustained injury arising out of and in the course of employment to his left calf, and claims to have sustained injury arising out of and in the course of employment to his lumbar spine.

As summarized in the Opinion on Decision, applicant testified that on 4/06/2023, he was pulling a hose to get ready for an inspection when he stepped on a plastic pipe, slipped, and fell backwards landing on the ground. He testified he injured his leg, calf, and back. He testified he was carrying the hose on his left side, and that when he landed, it was in a twisted position on his left side. He testified he received treatment for his injury that same day with a doctor from Kaiser.

He told the doctor how the injury occurred and that he fell backwards. The doctor told him it was a nerve issue and that it was very common. He was given a bag of ice and prescribed ibuprofen. (MOH/SOE, p. 8: 33-45) Applicant testified he went to a physical therapist for his calf and leg, and that he told the therapist his back was hurting. The therapist told him it was due to a stretched nerve. He was then referred to a chiropractor outside of Kaiser, and that he told the chiropractor about his back issues. The chiropractor told him the problem was not just his calf, but that it was also coming from his back. He testified the chiropractor did not provide treatment for his back because he said he was not the primary treating physician and the insurance company would not authorize it. (MOH/SOE, p. 9: 1-13) Applicant testified he returned to work full duty seven weeks after his injury. When he returned to work, he worked his regular duties but at a slower pace. His supervisor would tell him not to go beyond his limitations and to work at a slower pace. His supervisor told him to go back to Kaiser to let them know what he was feeling, which he did. Kaiser told him there was nothing more they could do and to go back to work. He asked the doctor to give him work restrictions, but the doctor said no, and discharged him. (MOH/SOE, p. 10: 24-36)

On 4/06/2023, applicant was examined by Fulton Chen, M.D. Under mechanism of injury, Dr. Chen noted applicant was in the process of pulling a hose and stepped on a tube, causing him to slip and twist his left leg without a fall. He diagnosed applicant with left gastrocnemius strain, left knee sprain, and left thigh muscle strain. He noted that the primary concern would be left calf strain, and prescribed Motrin and ice. Applicant was placed off work from 4/06/2023 through 4/10/2023, with work restrictions of occasionally standing, walking, and bending at the waist, no torso/spine twist, no climbing ladders, no use of scaffolds, lifting/carry/push/pull limited to no more than 10 pounds, and sit down job only. (Exhibit K)

On 4/17/2023, Dr. Chen noted applicant was overall better, but remained symptomatic. He noted applicant continued to walk with a limp. He recommended physical therapy and an ace wrap, and continued modified duty with no change in work restrictions from 4/17/2023 through 5/10/2023. (Exhibit J)

On 5/10/2023, Dr. Chen noted applicant was overall better. Applicant was to complete a course of physical therapy. There was no change in work restrictions from 5/10/2023 through 5/21/2023. (Exhibit I)

On 5/31/2023, Dr. Chen noted applicant continued to slowly improve. Applicant was to complete a course of physical therapy and was deemed able to return to work at full capacity on 5/31/2023. (Exhibit H)

On 6/06/2023, physical therapist Manisha Panvalkar, noted applicant presented with complaints of intermittent dull pain and ache in left proximal-lateral calf. She noted applicant reported he was back to work full duty and able to tolerate work without increase in symptom level. (Exhibit G)

On 6/21/2023, Dr. Chen noted applicant presented with a chief concern of pain over the left lower leg, with the patient overall the same. Applicant complained of pain, swelling, cramping, and a pulsating sensation, but was able to perform his regular work. Dr. Chen noted applicant had improved, but that his symptoms had not resolved after almost 3 months. He recommended applicant proceed with MRI imaging to evaluate for the potential of a tear. Despite applicant's complaints, Dr. Chen deemed applicant able to return to work at full capacity, with no limitations or restrictions. (Exhibit F)

On 7/19/2023, Dr. Chen noted applicant had improved, but his symptoms had not resolved. He noted the MRI images were benign. He recommended applicant start chiropractic care outside of Kaiser, and deemed applicant able to return to work at full capacity. (Exhibit C)

On 8/21/2023, Dr. Chen noted applicant was overall the same, with squatting as an aggravating factor. He noted applicant had not received any chiropractic care. Applicant was deemed able to return to work at full capacity. (Exhibit B)

On 9/18/2023, Dr. Chen noted applicant was overall the same, with stair climbing as an aggravating factor. He also noted applicant "even has left calf pain when he is lying down and sitting." Applicant had undergone chiropractic care and felt substantially better, and was currently working without restrictions, but had recently been laid off. Dr. Chen noted applicant had initially reported being the same, then reported being substantially better in relation to chiropractic care. He discharged applicant from care and returned him to full unrestrictive work with no need for future medical care and no ratable impairment, and recommended applicant contact his claims examiner to proceed with a QME process. (Exhibit A)

On 10/06/2023, applicant was evaluated by James Pedreiro, D.C. Applicant presented with left calf constant pain, with radiating pain into butt on left at hamstring attachment, and L4-5 pain felt upon palpation. Dr. Pedreiro noted there was radiculopathy in the lumbar region, and requested

lumbar manipulation and myofascial release of left calf and hamstring. Dr. Pedreiro opined applicant was unable to perform his usual work and specified work restrictions of “no repetitive bending, lifting, and squatting more than 20 lbs, no repetitive stairs.” (Exhibit 1)

On 3/04/2024, Orthopaedic Surgeon QME, Ramon Jimenez, M.D. evaluated applicant and reviewed 266 pages of medical records, including applicant’s deposition transcript. He diagnosed applicant with left calf (gastrocnemius) muscle strain, and left lumbago and sciatica. Dr. Jimenez opined applicant had reached maximum medical improvement as of the date of the examination, 3/04/2024. He found applicant’s diagnosis and disability were caused by the 4/06/23 injury, with signs and symptoms of lumbago and sciatica at the left lower extremity related by compensable consequence. He indicated there was no basis for apportionment, and assigned work preclusions of no lifting greater than 25 pounds, no push/pulling greater than 25 pounds, no repetitive bending, and no ladder climbing. Dr. Jimenez refrained from providing an impairment rating until he was able to review the results of an MRI scan of applicant’s lumbar spine. (Exhibit 8)

On 4/05/2024, responding to defense counsel’s letter questioning the mechanism of injury, he noted applicant had stated to him that it was raining and the floor was slippery, and that he had stepped on a pipe, which made him slip and fall on his left side. He noted Dr. Chen’s 4/06/2023 report indicated applicant had reported a “slip and fall, knee and lower buttocks is painful,” but also stated “he stepped on a tube causing him to slip and twist his left leg without a fall,” and again, “There was no fall.” Dr. Jimenez noted that on further review of the medical records made available to him, there was no mention of back pain. However, Dr. Jimenez opined,

Even though you are correct in that there is no documented lumbar spine complaints until he was seen by Dr. Pedreiro on 10/3/2023, **the applicant did report to me that he experienced the onset of lumbar spine pain insidiously after the 4/6/2023 injury. He stated he did inform them at the Kaiser Occupational Clinic but this was not noted in the Kaiser records.**

I am not a detective and can only report what the claimant told me.

**Another issue of causation might be that the lumbar spine symptoms became noticed or more pronounced as a result of compensable consequence. This would give relation to the original work injury. This is logical because of the problems with the left calf.**

Dr. Jimenez indicated that if applicant's radicular symptoms persist, it might be of benefit or an advantage to obtain an MRI of applicant's lumbar spine to make sure there is no evidence of radiculopathy, although in his physical examination he did not observe objective findings of radiculopathy. (Exhibit 9)

On 4/17/2024, in the Doctor's First Report of Injury, Sova Khuong, D.C. noted applicant complained of constant left calf pain and tightness, was unable to squat, and was affected with climbing stairs, kneeling, walking over 30-40 minutes, standing over 15-20 minutes and lifting over 20 pounds. Dr. Khuong noted applicant felt numbness in the left thigh with some pain, along with left low back pain that increased with sitting over 30 minutes, bending, heavy lifting, and walking/standing too long. Dr. Khuong requested MRIs of lumbar spine and left leg, and noted that at the time of layoff, applicant had been working with pain and limitations and was not doing his full duties due to pain in his left leg and low back, and that his coworkers reportedly helped with certain activities he could not do. (Exhibit 6)

On 7/25/2024, in response to another letter from defense counsel, and having reviewed additional medical records provided to him, including the 6/25/2024 MRI of the lumbar spine, Dr. Jimenez opined,

**The lumbar spine MRI scan was carried out on 6/25/2024 and this does point to the fact that he has mild multilevel degenerative disc disease, with spondylotic changes of the lumbar spine. In addition, there is evidence of a 5-mm left foraminal disc protrusion that is impinging on the exiting (sic) left L5 nerve root. There is concurrent moderate left foraminal narrowing.**

These results point to the possibility that his left calf pain, in addition to the left calf injury, may be indicative of a radicular nature or a radiculopathy from the lumbar disc.

...I cannot at this time finalize my opinion and must reverse my previous opinion as stated in my 3/4/2024 report that the claimant had reached the point of maximum medical improvement at that time.

(Exhibit 10)

On 9/18/2024, Dr. Jimenez was deposed. He reiterated his opinion that applicant's low back is a compensable consequence of the 4/06/2023 left calf injury. After some back and forth with regard to the MMI date, Dr. Jimenez indicated he would remain of the opinion that applicant was MMI as of 3/04/2024. Dr. Jimenez testified,

My understanding of MMI is that the claimant or the injured worker has reached a plateauing effect, as you state, in his report of symptoms, signs, treatment, et cetera. It also includes in there diagnostics. And, therefore, if we are to accept compensable consequence even to a minimal degree, then he would not be—then the MRI really plays a role. MRI of the lumbar spine plays a role in determination of that MMI and consequent impairment rating.

(Exhibit 7, p. 50: 1-9)

On 10/22/2024, primary treating physician Sova Khuong, D.C., noted she had reviewed the 7/25/2024 report of QME Ramon Jimenez, M.D., who found industrial causation of the left calf and a compensable consequence injury with lumbago and left sciatica. Dr. Khuong returned applicant to modified work on 10/22/2024 with restrictions of no lift, push, pull to 25 pounds, no repeated squatting and no climbing ladders, and opined applicant was not permanent and stationary. (Exhibit 2)

#### **IV.** **DISCUSSION**

##### **THERE IS INJURY AOE/COE TO THE LUMBAR SPINE**

Defendant argues that QME Dr. Jimenez agreed that, despite applicant's narrative of falling, there was no documented fall, that there is a lack of medically documented complaints of applicant's lumbar spine from April 2023 through September 2023, and that all evidence indicates applicant was returned to full and unrestricted duties from May 2023 through August 31, 2023, his last day of work.

Defendant asserts that the undersigned gave extraordinary weight to applicant's testimony so as to counter all other evidence. Defendant further argues that the sole evidence of a lumbar spine injury is applicant's testimony, as none of the medical reports document applicant's lumbar spine complaints. While technically, there is a lack of documentation specifically mentioning applicant's lumbar spine complaints, as discussed in the undersigned's opinion, Dr. Chen's reports document applicant's complaints of pain, swelling, cramping, and a pulsating sensation, among others, and note applicant's unresolved symptoms. Applicant also mentioned similar symptoms and complaints to QME Dr. Jimenez and to applicant's current primary treating physician, Dr. Khuong. Dr. Jimenez noted that applicant reported that he experienced the onset of lumbar spine

pain insidiously after the 4/06/2023 injury and that he stated he had informed Kaiser but that it had not been noted in the records.

Further, in his deposition, Dr. Jimenez testified that although applicant did not fall, “it was the twisting component, the violent torquing component to his lumbar spine, that could reasonably have caused the lumbar spine injury. (Exhibit 7, p. 36: 20-25) Dr. Jimenez also opined, to a reasonable degree of medical probability, that the signs and symptoms of lumbago and sciatica of the left lower extremity are related by compensable consequence. (Exhibit 8, p. 21) Dr. Jimenez also opined that the 6/25/2024 MRI of the lumbar spine point to the possibility that applicant’s left calf pain and injury may be indicative of a radicular nature or a radiculopathy from the lumbar disc. (Exhibit 10)

Applicant has the burden of proving reasonable probability of industrial causation based on substantial evidence. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 651 [72 Cal.Rptr.2d 217, 951 P.2d 1184]) An applicant need not prove causation to a scientific certainty. A "reasonable" or "probable" causal connection will suffice. (*McAllister v. Workers' Comp. Appeals Bd.*, (1968) 69 Cal. 2d 408, [33 Cal. Comp. Cases 660].) For purposes of meeting the causation requirement in workers' compensation cases, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, [80 Cal.Comp.Cases 489]). To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and set forth reasoning to support the expert conclusions reached. (*E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, [71 Cal.Comp.Cases 1687].) An injury is a “compensable consequence” when the subsequent injury is the direct and natural consequence of an original industrial injury; the subsequent injury is considered to relate back to the original injury (*Ponce v. Barrett Business Servs.*, 2017 Cal. Wrk. Comp. P.D. LEXIS 175, citing *Beaty v. Workers' Comp. Appeals Bd.* (1978) 80 Cal. App. 3d 397 [144 Cal. Rptr. 78, 43 Cal. Comp. Cases 444.]

Here, although technically defendant is correct that there is no mention in the medical record of applicant’s *lumbar spine* complaints until applicant saw Dr. Pedreiro on 10/06/2023, the undersigned noted Dr. Chen’s reports document applicant’s continuous and unresolved complaints. For instance, on 9/18/2023, Dr. Chen notes applicant is overall the same, with stair climbing as an aggravating factor, and also notes applicant “even has left calf pain when he is lying

down and sitting.” Notwithstanding applicant’s complaints, Dr. Chen discharged applicant from care with no restrictions and no need for future medical care. (Exhibit A, p. 1) This was less than three weeks prior to Dr. Pedreiro’s 10/06/2023 evaluation, wherein he diagnosed applicant with radiculopathy in the lumbar region. (Exhibit 1) As discussed in the undersigned’s opinion, it is not uncommon that doctors within the workers’ compensation system limit treatment to only those body parts authorized by the insurance carrier. Applicant credibly testified that he told his doctors about his low back complaints, but that he did not know why his complaints were not noted in the reports. Indeed, applicant’s primary treating physician, Dr. Khuong, mentioned in her report, “It is noted that the low back was not an accepted body part up to now and his adjustor ... advises she will not allow me to see the patient if I ‘do not cease with trying to treat the lumbar spine.’” (Exhibits 2 and 3)

QME Dr. Jimenez, an orthopedic surgeon, reviewed 266 pages of medical records, conducted a thorough evaluation of the applicant, issued various reports responding to defendant’s letters seeking clarification, and was deposed by able counsel. He opined that it was the twisting component, and not necessarily a fall, that could reasonably cause applicant’s low back injury. Dr. Jimenez further opined that the 6/25/2024 MRI showing evidence of a 5 mm left foraminal disc protrusion impinging on the left L5 nerve root, is consistent with applicant’s complaints of left back and leg pain. The undersigned reviewed and considered all of the medical evidence and applicant’s testimony, and found applicant to be a credible witness, and the reports and opinions of QME Dr. Jimenez to be substantial medical evidence. The overwhelming medical evidence supports the finding that applicant’s low back injury arose out of and in the course of employment.

#### **APPLICANT IS P&S/MMI EFFECTIVE 3/04/2024**

Defendant asserts that the undersigned’s finding that applicant reached permanent and stationary (P&S) status on 3/04/2024 is not consistent with the medical evidence. Defendant argues that because applicant was returned to unrestricted full duty in May 2023 and discharged from care by Dr. Chen on September 18, 2023, he is not entitled to further temporary disability benefits. However, as summarized in the opinion, Dr. Chen’s reports document applicant’s continuous complaints and unresolved symptoms. Notwithstanding this, Dr. Chen found applicant P&S as of 9/18/2023. However, applicant credibly testified that although he was released to full duty, he was working at a slower pace and had been told by his supervisor not to work beyond his limitations

and to work at a slower pace. Applicant's testimony was unrebutted as there is no evidence, testimonial or otherwise, to indicate this was not the case. Further, defendant misconstrues the testimony of Dr. Jimenez by asserting he found applicant MMI/P&S as of 10/03/2023. While Dr. Jimenez initially testified that he would modify his MMI date to possibly 10/3/2023, it was based on defense counsel's incorrect reading of Dr. Pedreiro's 10/23/2023 report, which defense counsel quoted as "Able to perform usual work, no modifications" on 10/3/2023. (Exhibit 7, p. 42: 5-25) However, as confirmed with the parties as noted above, in his 10/06/2023 (not 10/23/2023) report, Dr. Pedreiro returned the applicant to modified duty, not full duty, with restrictions of no repetitive bending, lifting and squatting more than 20 lbs., no repetitive stairs. (Exhibit 1, p. 2) Even so, Dr. Jimenez further testified that if he were to consider even a one percent of compensable consequence etiology for applicant's lumbar spine, then he would have to take into consideration the signs and symptoms and the MRI evidence that has been shown. (Exhibit 7, p. 43: 1-4; p. 46: 9-16) Dr. Jimenez opined that based on his review of the medical record and of the 6/25/2024 MRI of the lumbar spine, which confirmed applicant's radicular complaints, applicant is P&S/MMI as of 3/04/2024.

**APPLICANT IS ENTITLED TO TEMPORARY DISABILITY INDEMNITY FROM 9/01/2023 THROUGH 3/04/2024**

Applicant's last day of work, due to lay off, was on 8/31/2023. He continued to have unresolved complaints and sought treatment with Dr. Pedreiro, who noted applicant was unable to perform his usual and customary work and returned him to modified work on 10/03/2023. When applicant was unable to continue treating with Dr. Pedreiro, he sought care from Dr. Sova Khuong, who on 4/17/2024, returned applicant to modified work. It is Dr. Khuong's opinion that applicant is currently not P&S. (Exhibits 2 – 5) QME Dr. Jimenez opined that the 6/25/2024 MRI of the lumbar spine played a significant role in the determination of applicant's MMI date, as complete diagnostics had not been done until then. Dr. Jimenez ultimately opined applicant is MMI as of 3/04/2024, the date of his last evaluation. Consequently, the undersigned found applicant is entitled to temporary disability indemnity from 9/01/2023 through 3/04/2024 at the rate of \$934.91 per week, less reimbursement to EDD for overlapping periods.

**A FINAL REPORT BY QME DR. JIMENEZ IS NECESSARY**

Defendant asserts that QME Dr. Jimenez finalized his conclusions via the QME deposition of 9/18/2024. Dr. Jimenez testified he would “probably give him a five-percent lower extremity, according to Table 17-5, impairment due to unilateral leg muscle atrophy under Category B for the calf,” which translates to 2% WPI (Exhibit 7, p. 27: 20-23). However, ultimately, in his 3/04/2024 report Dr. Jimenez refrained from providing an impairment rating until he was able to review the results of the MRI of applicant’s lumbar spine. Further, in his deposition, Dr. Jimenez testified that if he would need to consider whether there is contribution from applicant’s lumbar spine radiculopathy to impairment of applicant’s left calf. (Exhibit 7, p. 27: 1-7) Thus, the undersigned deferred the issues permanent disability and apportionment, pending a final report from QME Dr. Jimenez.

**V.**

**RECOMMENDATION**

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be denied.

**NOTICE OF TRANSMISSION:**

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

**DATE: 02/18/2026**

**NORMA L. ACOSTA  
WORKERS’ COMPENSATION JUDGE**